

In the Court of Appeals of the State of Alaska

Jonathan William Nelson,
Appellant,

v.

State of Alaska,
Appellee.

Court of Appeals No. **A-13795**

Order Bail Appeal

Date of Order: **March 3, 2021**

Trial Court Case No. **3AN-18-00544CR**

Before: Allard, Chief Judge, and Wollenberg and Harbison, Judges.

Jonathan William Nelson has filed a bail appeal in 3AN-18-00544 CR. The primary issue being appealed is the superior court's rejection of two proposed third-party custodians. The appeal also raises a number of other issues, most of which are either moot, without merit, inadequately briefed, or not properly before us.

Nelson has three pending cases. In 2013, Nelson was charged with first-degree sexual assault and first-degree burglary after allegedly breaking into the residence where his former partner was staying and sexually assaulting her in front of their three-year-old child. Nelson was apparently on felony probation for robbery at the time this alleged conduct occurred.

The court released Nelson on electronic monitoring pending trial. While on electronic monitoring, Nelson was briefly remanded for the use of opiates without a prescription.

The court again released Nelson on electronic monitoring. Nelson was subsequently charged, in January 2018, with second-degree misconduct involving a controlled substance for allegedly delivering 5.6 grams of heroin to an agent of an

undercover officer. In response to the new felony charge, the court added a third-party custodian requirement and an additional \$5,000 cash performance bond to Nelson's bail conditions. Nelson was subsequently released on bail with electronic monitoring and the third-party custodianship of his girlfriend, who later became his wife.

In January 2020, the State charged Nelson with multiple new crimes, including violating the conditions of his release, third-degree assault, cruelty to animals, resisting arrest, and reckless endangerment following an incident in which Nelson allegedly left his third-party custodian, allegedly resisted arrest, and allegedly tried to have a pit bull attack the arresting officer. His wife was also charged with violating a custodian's duty, first-degree hindering prosecution, and interfering with arrest based on her alleged actions to aid Nelson.

On December 23, 2020, the superior court held a bail hearing to evaluate two new proposed third-party custodians. Both proposed third-party custodians had served as third-party custodians in the past. After hearing the proposed third-party custodians' testimony, the superior court rejected both proposed custodians, finding that neither third-party custodian was suitable for Nelson's case (although they could be suitable third-party custodians in a different case).

The court explained its reasoning on the record. Specifically, the court found that the first proposed third-party custodian was not a suitable third-party custodian for Nelson because Nelson had a documented history of using opiates without a prescription and the proposed third-party custodian had prescriptions for opiates that she took on a regular basis.

The court found that the second proposed third-party custodian was not suitable because Nelson had previously paid her \$300 to “watch” Nelson’s wife for him, because he believed that his wife was cheating on him. The proposed third-party custodian testified that she acted like a private investigator and went to the wife’s residence four times a day to watch her. She also testified that, at times, she was not sure whether she wanted to be a third-party custodian for Nelson because she was not getting along with his wife. In rejecting this third-party custodian, the court expressed its concerns that the proposed third-party custodian could be manipulated or controlled by Nelson given her involvement in watching his wife for him.

Nelson now appeals the superior court’s rejection of the two proposed third-party custodians. On appeal, Nelson argues that the superior court had no discretion to reject the third-party custodians once it recognized that either one of them could possibly be an appropriate third-party custodian in another type of case with a different defendant. According to Nelson, a superior court’s authority to reject a third-party custodian is strictly circumscribed by statute and a court is only allowed to consider whether a proposed third-party custodian is willing and physically able to be a third-party custodian.

Nelson’s argument is based on his reading of AS 12.30.021(b), which provides in pertinent part:

(b) A judicial officer may appoint an individual as a third-party custodian if the proposed custodian

(1) provides information to the judicial officer about the proposed custodian’s residence, occupation, ties to the

community, and relationship with the person, and provides any other information requested by the judicial officer;

(2) is physically able to perform the duties of custodian of the person;

(3) personally, by telephone, or by other technology approved by the court, appears in court with the person and acknowledges to the judicial officer orally and in writing that the proposed custodian

(A) understands the duties of custodian and agrees to perform them; the proposed custodian must specifically agree to immediately report in accordance with the terms of the order if the person released has violated a condition of release; and

(B) understands that failure to perform those duties may result in the custodian's being held criminally liable under AS 09.50.010 or AS 11.56.758.

According to Nelson, "may appoint" should be interpreted as "must appoint." Nelson cites no authority for this claim. Nor does he provide any legislative history of the provision.

We interpret statutes "according to reason, practicality, and common sense, taking into account the plain meaning and purpose of the law as well as the intent of the

drafters.”¹ We decide questions of statutory interpretation on a sliding scale: “[T]he plainer the language of the statute, the more convincing contrary legislative history must be.”²

Here, the State has provided us with legislative history indicating that the legislature intended to set minimal standards that must be met for a person to be approved as a third-party custodian but that the legislature did not intend to deprive trial courts of their discretion to reject individuals who met the minimal standards but were nevertheless unsuitable to be a third-party custodian in a particular case.³ This legislative history is in accord with the plain meaning of the text, which uses “may” rather than “shall” and also expressly permits a trial court to consider “any other information requested by the judicial officer.”

Accordingly, we reject Nelson’s contention that the superior court was obligated as a matter of law to accept his proposed third-party custodians because they purportedly met the minimal requirements. Instead, we will review the superior court’s rejection of the third-party custodians for an abuse of discretion. Under this standard of review, we will uphold the superior court’s decision unless that decision was “arbitrary,

¹ *Marathon Oil Co. v. State, Dep’t of Nat. Res.*, 254 P.3d 1078, 1082 (Alaska 2011) (quoting *Native Village of Elim v. State*, 990 P.2d 1, 5 (Alaska 1999)).

² *Id.* (quoting *Matanuska-Susitna Borough v. Hammond*, 726 P.2d 166, 175 (Alaska 1986)).

³ See Sectional Analysis for House Bill 324, at 4 (Mar. 19, 2010); Minutes of House Judiciary Comm., House Bill 324, Testimony of Susan McLean, Crim. Div. Dir., Alaska Dep’t of Law, at 2:15:39 p.m. (Mar. 19, 2010).

capricious, manifestly unreasonable, or stemmed from an improper motive.”⁴

Here, the record shows that the superior court provided sound reasons for rejecting Nelson’s proposed third-party custodians. We find no abuse of discretion, and we therefore uphold the superior court’s rejection of the two proposed third-party custodians.

Nelson’s other arguments

Nelson also raises a number of confusing arguments in his appeal. For example, Nelson challenges the superior court’s decision to consider the State’s request for a no-contact order at the same time as it was considering Nelson’s proposed third-party custodians. But, as the State points out, the superior court denied the State’s request for a no-contact order between Nelson and his wife, so any question of impropriety in considering the State’s request is therefore moot.

At oral argument, Nelson’s attorney argued that he was actually challenging the imposition of “conditions regarding 24/7 or house arrest” that were apparently imposed *sua sponte* by the superior court. But neither the State nor the Court understood this challenge from Nelson’s briefing. Nor has Nelson provided us with the information necessary for us to review such a challenge. Accordingly, we express no opinion about these conditions or the manner in which they were imposed.

Nelson also accuses the State’s attorney of proffering “perjured testimony”

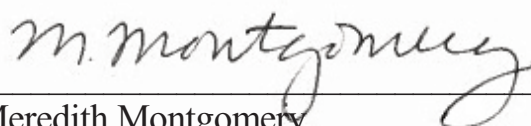
⁴ *Wahl v. State*, 441 P.3d 424, 430 (Alaska 2019) (internal quotations omitted).

and making “intentional misstatements of material fact,” but he fails to support these claims on appeal. He also seeks a declaratory judgment from this Court that the State’s attorney violated his privacy rights by talking to his landlord regarding the charges and his housing situation. We decline to issue such a judgment, nor do we believe this bail appeal to be a proper forum for the privacy violations that Nelson alleges, particularly given that the superior court did not rely on the landlord’s statements for any of its bail decisions.

In sum, we conclude that the only issue properly before us in this appeal is the question of whether the superior court abused its discretion in denying Nelson’s proposed third-party custodians. Because we find no abuse of discretion, we AFFIRM the superior court’s ruling.

Entered at the direction of the Court.

Clerk of the Appellate Courts


Meredith Montgomery

cc: Judge Peterson
Trial Court Clerk - Anchorage

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